

FEDERAL CIRCUIT COURT OF AUSTRALIA

KAUR & ORS v MINISTER FOR IMMIGRATION & ANOR

[2015] FCCA 3533

Catchwords:

MIGRATION –Migration Review Tribunal – Skilled (Provisional) (Class VC) – public interest criterion 4020 – requirement that there be no evidence that the applicant has provided a bogus document to the Minister – apparently bogus IELTS test result provided – application for merits review – no jurisdictional error discernible.

Legislation:

Migration Act 1958 ss.5, 359, 359A

Migration Regulations 1994 schedule 2 cl.485.224, reg.1.03, public interest criterion 4020

Cases cited:

Singh v Minister for Immigration, Multicultural Affairs and Citizenship [2013] FCCA 1435

First Applicant:	RAJWINDER KAUR
Second Applicant:	JAGROOP SINGH
Third Applicant:	CHARANJOT SINGH CHANAL
First Respondent:	MINISTER FOR IMMIGRATION & BORDER PROTECTION
Second Respondent:	MIGRATION REVIEW TRIBUNAL
File number:	MLG 1548 of 2014
Judgment of:	Judge Riley
Hearing date:	9 December 2015
Date of last submission:	9 December 2015

Delivered at: Melbourne

Delivered on: 9 December 2015

REPRESENTATION

Counsel for the first applicant:	The first applicant appeared in person
Solicitors for the first applicant:	The first applicant was not represented
Counsel for the second applicant:	No appearance
Solicitors for the second applicant:	The second applicant was not represented
Counsel for the third applicant:	The third applicant appeared through his litigation guardian
Solicitors for the third applicant:	The third applicant was not represented
Solicitor Advocate for the first respondent:	Marcus Priest
Solicitors for the first respondent:	Sparke Helmore
Counsel for the second respondent:	No appearance
Solicitors for the second respondent:	Sparke Helmore

ORDERS

- (1) The application filed on 31 July 2014 be dismissed.
- (2) The applicants pay the first respondent's costs of the proceeding fixed in the sum of \$5,800.
- (3) The title of the proceeding be amended so that the name of the second respondent is the Administrative Appeals Tribunal.

(4)

**FEDERAL CIRCUIT
COURT OF AUSTRALIA AT
MELBOURNE**

MLG 1548 of 2014

RAJWINDER KAUR
First Applicant

JAGROOP SINGH
Second Applicant

CHARANJOT SINGH CHANAL
Third Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION
First respondent

MIGRATION REVIEW TRIBUNAL
Second respondent

REASONS FOR JUDGMENT

(revised from the transcript)

1. This is an application for review of a decision of the Migration Review Tribunal (“the tribunal”). The applicants applied for Skilled (Provisional) (Class VC) visas on 27 July 2011. The first applicant was the primary applicant, the second applicant was her husband and the third applicant was their child. The delegate refused those visas

because he or she was not satisfied that the applicants met public interest criterion 4020 (“PIC 4020”).

2. That criterion required that there be no evidence that the applicant had provided false or misleading information, or a bogus document to the Minister. “Bogus document” is defined in s.5 of the *Migration Act 1958* (“the Act”) to mean:

... a document that the Minister reasonably suspects is a document that:

(a) purports to have been, but was not, issued in respect of the person; or

(b) is counterfeit or has been altered by a person who does not have authority to do so; or

(c) was obtained because of a false or misleading statement, whether or not made knowingly.

3. In this particular case, the applicant was required, pursuant to cl.485.224 of Schedule 2 to the *Migration Regulations 1994*, to satisfy the English language proficiency requirements.
4. The applicants included with their application an IELTS test report, with a particular number and a particular date, indicating that the first applicant had achieved scores of 6.5 for listening, 6.0 for reading, 6.0 for writing and 6.0 for speaking in a test that she had undertaken on 16 September 2010.
5. The delegate attempted to verify that information by checking the IELTS verification system. However, the delegate was unable to find the test that the first applicant claimed to have undertaken. The delegate wrote to the applicants on 29 June 2012, explaining that the IELTS verification system had not verified the test report that the first applicant claimed to have undertaken, and sought the applicants’ response. However, no response was received. Consequently, the delegate refused the visa applications.
6. The applicants then applied to the tribunal. On 7 May 2014, the tribunal wrote to the applicants, stating that it had considered all the material before it but was unable to make a favourable decision on the basis of that material alone.

7. The tribunal invited the applicants to a hearing on 4 June 2014. The applicants did not respond to the hearing invitation and did not appear before the tribunal on 4 June 2014. There is a case note in the court book which indicates that a tribunal officer contacted the applicants' agent on 4 June 2014, shortly after the hearing was scheduled to begin. The note records that the agent said he had instructed the applicants to return the response to hearing. The agent said further that the applicants had decided not to attend the hearing.
8. The tribunal wrote to the applicants on 6 June 2014, pursuant to ss.359 and 359A of the Act, inviting the applicants to provide comments on the apparent lack of confirmation from the IELTS verification system that the test report the applicants had provided was valid. The correspondence explained the relevance of the information and requested a response by 2 July 2014. The applicants did not provide any response by 2 July 2014, and nor did they seek an extension of time.
9. In the circumstances, the tribunal decide to determine the matter without taking any further steps to obtain information or comments from the applicants. The tribunal noted the definition of bogus document and the consideration of it set out in *Singh v Minister for Immigration, Multicultural Affairs and Citizenship* [2013] FCCA 1435 at paragraphs 24 to 26.
10. The tribunal was satisfied that there was evidence before it that the applicant had given a bogus document to the Minister in relation to her visa application, being the IELTS test report. The tribunal therefore found that it was not satisfied that there was no evidence that a bogus document had been given to the Minister. Consequently, the tribunal was satisfied that the applicant did not meet PIC 4020.
11. The tribunal then went on to consider whether PIC 4020 should be waived. The tribunal noted that PIC 4020 can be waived where there are compelling circumstances that affect the interests of Australia or where there are compassionate or compelling circumstances that affect the interest of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, as defined in reg.1.03 of the *Migration Regulations 1994*.

12. The tribunal noted that there were no claims before it in relation to the possible waiver of PIC 4020, and there was nothing that emerged from the material before it that suggested that there were any relevant compelling or compassionate circumstances. Consequently, the tribunal decided that PIC 4020 should not be waived. The tribunal concluded that the applicant did not satisfy PIC 4020.
13. The tribunal also considered the position of the secondary applicants, being the first applicant's partner and child. The tribunal noted that there was no claim or evidence before the tribunal that the secondary applicants met any of the relevant criteria. Consequently, the tribunal affirmed the decision of the delegate not to grant the applicants Skilled (Provisional) (Class VC) visas.
14. The applicants then applied to this court for review on 31 July 2014. Their grounds of application are stated in their application as follows:
 1. *I have applied for a skilled (Provisional)(Class VC) visa under s.65 of Migration Act 1958 (the Act) on 27.07.2011 with my Husband Mr. Jagroop Singh and son Master Charanjot Singh Chahal, with relevant documents. The delegate refused to grant the visa on 21 Sept 2012 on the basis that I did not satisfy the requirements of cl.485.224 of schedule 2 to the migration regulations 1994 (the Regulations).The delegate was not satisfied that I did not met Public Interest Criterion (PIC)4020.*
 2. *I have applied to MRT to reconsider the decision made by the delegate, at the time of making application, I nominated the occupation of a Cook, and I had IELTS exam result as well but I don't know what happened exactly and delegate said that there was no result contained within the IELTS verification system for me for the test.*
 3. *Delegate sent me letter on 29 June 2012 asking about to verify the test report no. 101N041633TR122G, As I have given exam through IELTS centre only I didn't have anything else apart from result.*
 4. *I request honourable authority to please consider my application and grant me time so that I can collect the documents and can present documents before honourable justice.*

15. The grounds do not point to anything remotely resembling a jurisdictional error. They appear to seek merits review. This court is not permitted to provide merits review.
16. Before the court today, the first applicant said that she had tried to get documents from India but had been unsuccessful. I note that she claimed to have done the IELTS test in 2011. She has had four years to get documents from India if that is what she wished to do. The applicant also told the court today that she has no proof, apparently meaning no proof that the document that she provided was a genuine document, rather than a bogus document.
17. I have considered the tribunal's decision-making process and reasons. I have been unable to discern any jurisdictional error in them. The tribunal appears to have given the applicants ample opportunity to comment on and respond to the apparent position that the IELTS report submitted by the applicant was a bogus document.
18. The applicants did not take that opportunity. They did not attend the tribunal hearing. All in all, it seems to me that there is no basis upon which it could be said that there is a jurisdictional error in this case. Consequently, the application must be dismissed.

I certify that the preceding eighteen (18) paragraphs are a true copy of the reasons for judgment of Judge Riley

Associate:

Date: 14 January 2016